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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,555	10/30/2003	Ian Burgess	2073.0120000/DSC/RLP	5931

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WASHINGTON, DC 20005

EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,555

Applicant(s)

BURGESS, IAN

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 1,2,7-15 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 3-6 and 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03292004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12 and 13 contain the phrase "Said dispersion plate" in line 11 of each claim that renders the claims vague and indefinite. It is not clear what applicant is referring to as the dispersion plate as there is insufficient antecedent basis for this limitation in the claims. Therefore, since it could not be determined what applicant was referring to with this limitation, these claims could not be examined on their merits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin 4,733,483. Lin '483 discloses all the limitations of the claims including the following: a midsole 10 having at least one protrusion 34 disposed in a forefoot region (see Figure 1); a plate 18 having at least one receptacle 28 disposed therein; the plate placed adjacent to the midsole such that the receptacle aligns with the protrusion (see Figure 3); the diameter of the receptacle is not

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greater than the diameter of the protrusion (see Figure 3); an outsole 14 fixedly attached to the plate and the midsole; the outsole is disposed along the entire length of the shoe (see Figure 3); at least one projection 34 is disposed in a forefoot region of the outsole.

5. Claims 1-2, 14-15 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brue' 6,076,282. Brue' '282 discloses all the limitations of the claims including the following: a midsole S having at least one protrusion 1, 1a disposed in a forefoot region; a plate P having at least one receptacle 2 disposed therein; the plate placed adjacent to the midsole such that the receptacle aligns with the protrusion (see Figure 6); the diameter of the receptacle is not greater than the diameter of the protrusion (see Figure 6); an outsole fixedly attached to the plate and the midsole (see col. 6, lines 22-56); the outsole is disposed along the entire length of the shoe (col. 6, lines 22-56); a cutout 2 in the midsole wherein the protrusion is disposed in the cutout (see Figure 6); the protrusion is disposed in the cutout such that an outward-most extremity of the protrusion approximately aligns with an outward-most surface of the midsole (see Figure 6). With respect to the limitations of claims 18 and 19, the mere usage of Brue' '282 in the fashion disclosed would meet the limitations in the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 8-10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 18 above in view of Ludemann 6,199,304. The references as applied to claims 1 and 18 above disclose all the limitations of the claims except for a sockliner having at least one nub disposed in a forefoot region on a lower surface and wherein the sockliner is placed on top of the midsole with the nub facing the midsole and an abrasion-resistant material attached to the upper surface of the sockliner with absorbent properties. Ludemann '304 teaches that a sockliner 10 with an upper layer of abrasion resistant and absorbent material (see col. 3, line 27-col. 4, line 28) can be placed on top of a midsole to aid in cushioning the user's foot and providing comfort to the user. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a sockliner, such as that taught by Ludemann '304, on the midsole of the references as applied to claims 1 and 18 above, to provide cushioning and comfort to the user's foot.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over either one of the references as applied to claim 1 above. Each of the references as applied to claim 1 above discloses all the limitations of the claims except for a stiff board disposed in the arch area of the shoe. In making shoes, it has been well known to place lasting boards, a stiff board, in the arch area to give support to the user's foot during use. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a last board in the arch of the shoe of the references as applied to claim 1 above, to aid in supporting the user's arch during use.

Allowable Subject Matter

9. Claims 16-17 are allowed over the prior art of record.

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10. Claims 3-6 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

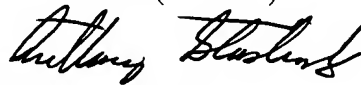
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anthony Stashick
Primary Examiner
Art Unit 3728

ADS